IN THE

Supreme Court of the United States

October Term, 1972.

72-851

THE ONEIDA INDIAN NATION OF NEW YORK STATE, also known as the ONEIDA NATION OF NEW YORK, also known as the ONEIDA INDIANS OF NEW YORK, and the ONEIDA INDIAN NATION OF WISCONSIN, also known as the ONEIDA TRIBE OF INDIANS OF WISCONSIN, Inc.,

Appellants,

v.

THE COUNTY OF ONEIDA, NEW YORK, and THE COUNTY OF MADISON, NEW YORK,

Appellees.

BRIEF FOR APPELLEE, COUNTY OF MADISON.

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CITATIONS.

IN THE

District Court of the United States

October Term, 1972.

THE ONEIDA INDIAN NATION OF NEW YORK STATE, also known as the Oneida Nation of New York, also known as the Oneida Indians of New York, and THE ONEIDA INDIAN NATION OF WISCONSIN, also known as the Oneida Tribe of Indians of Wisconsin, Inc.,

Appellants,

v.

THE COUNTY OF ONEIDA, NEW YORK, and THE COUNTY OF MADISON, NEW YORK,

Appellees.

BRIEF FOR APPELLEE, COUNTY OF MADISON.

Questions Presented.

I. Is there any federal jurisdiction, because the claim fails to comply with the "well-pleaded complaint" rule?

II. Can there be federal jurisdiction, where there is no diversity of citizenship?

III. Is a county a "person" within the meaning of the Civil Rights Act, 42 U. S. C. Section 1983 and 28 U. S. C. Section 1343 (3)?

Statutes Involved.

25 U. S. C. Section 177 (1964).

Act of 1875.

Act of 1794 (now 25 U. S. C. Section 177).

28 U. S. C. 1332 (a).

28 U. S. C. 1332 (a) (1).

28 U. S. C. Section 1332 (a) (3).

42 U. S. C. Section 1983.

28 U. S. C. Section 1343 (3).

Statement.

The appellants assert that in 1795 a treaty was negotiated between the predecessors of the appellants and the State of New York for approximately one hundred thousand acres of land owned by the appellants' predecessors since the beginning of time.

The appellants contend that they were fraudulently induced to dispose of the land, and as a result thereof the conveyance to the State of New York was in violation of treaty obligations of the United States and of the Indian Non-Interference Act of 1790, now 25 U. S. C. Section 177 (1964).

The cornerstone of the appellants' complaint is contained in paragraph designated 22 of the first amended complaint, which reads as follows:

22. Subsequent to the "Treaty" of 1795, part of the premises purportedly deeded to the State and others became occupied by and recorded in the name of the Counties of Oneida and Madison, New York, the defendants herein. The defendants currently occupy parts of said premises for buildings, roads, and other public improvements. By reason of such use and occupancy of plaintiffs' premises, defendants for the period January 1, 1968 through December 31, 1969 became indebted to plaintiffs for the fair rental value of such premises to the extent of at least $10,000, exclusive of costs and interest.

Reasons for Denying the Writ.

I

The writ of certiorari should be denied because there is no federal question jurisdiction due to the fact that the complaint does not comply with the "well-pleaded complaint" rule.

II

There is no federal jurisdiction, because there is no diversity of citizenship.

III

A county is not a "person" within the meaning of 42 U. S. C. Section 1983 and 28 U. S. C. Section 1343 (3) "Civil Rights Act."

POINT I.

There is no federal question jurisdiction, because the claim does not comply with the "well-pleaded complaint" rule.

It is well established that federal question jurisdiction will exist only if the reliance on a federal right appears on the face of a well-pleaded complaint. The first Supreme Court decision construing the Act of 1875, which created federal question jurisdiction, in which state rule was applied was *Gold-Washington & Water Co. v. Keyes*, 96 U. S. 199 (1877), and the rule has been followed ever since. The practical effect of the rule is to bar "excess to federal court on the basis of allegations which are not required by nice pleading rules," see ALI Study of the Division of Jurisdiction between State and Federal Courts, Commentary on Section 1311, pages 169-70 (1969). This is particularly referrable to cases involving rights to land.

The appellants' complaint, when carefully analyzed, delineates the fact that the action is basically one of ejectment. There is a long uninterrupted succession of Supreme Court decisions holding that the complaint in such an action presents no federal question, even when the plaintiff's claim of right of title is founded on a federal statute, patent or treaty. *Florida Central Railroad v. Bell*, 176 U. S. 321 (1900); *Filhiol v. Maurice*, 185 U. S. 108 (1902); *Filhiol v. Torney*, 194 U. S. 356 (1904); *Taylor v. Anderson*, 234 U. S. 74 (1914); *White v. Sparkhill Realty Corp.*, 280 U. S. 500 (1930); *Deere v. St. Lawrence River Power Co.*, 32 F. 2d 550 (2 Cir. 1929).

The question presented by the appellants does not arise under the 1794 statute, now 25 U. S. C., Section 177.

Federal Courts may not apply State statutes expanding equity jurisdiction beyond that which prevailed when the Constitution was adopted. This rule is required by the Seventh Amendment's guarantee of jury trial in actions of law. *Whitehead v. Shattuck*, 138 U. S. 146 (1891); *Guaranty Trust Co. v. York*, 326 U. S. 99, 105-06 (1945).

The case of *DiGiovanni v. Camden Fire Ins. Ass'n*, 296 U. S. 62, 69-70 (1935), is authority for the proposition that there is no federal question jurisdiction over an action in ejectment.

POINT II.

There is no federal jurisdiction, because there is no diversity of citizenship.

The appellants could invoke 28 U. S. C. Section 1332 (a) (1) which confers jurisdiction in actions between citizens of different states, or 28 U. S. C. Section 1332 (a) (3) which confers jurisdiction in actions between citizens of different states and in which foreign states or citizens or subjects are additional parties.

The district court summarily dismissed the appellants' claim that the Oneida Tribe of Wisconsin, Inc., was a citizen of Wisconsin.

The district court drew the analogy of an unincorporated association, under *United Steelworkers of America v. R. H. Bouligny, Inc.*, 382 U. S. 145 (1965), and

stated that jurisdiction under U. S. C. Section 1332 (a) (1) would not be conferred because of the New York Citizenship of many of the Nation's members.

The appellants contend that this analogy is fallacious, since an Indian nation is unique. See Federal Indian Law 341. In the event that this were true, it would not aid the appellants under 28 U. S. C. Section 1332 (a) (1). In the case of *Strawbridge v. Curtiss*, 7 U. S. (3 Cranch) 267 (1806), the rule stated that in order to have complete diversity, each distinct interest should be represented by persons, all of whom might be entitled to sue, or may be sued, in the federal courts.

Where the interest involved was joint, each of the persons concerned in that interest must be competent to sue or liable to be sued, in those courts. This rule has been followed in *Florida Central Railroad v. Bell*, 176 U. S. 321 (1900); *Hooe v. Jamieson*, 166 U. S. 395 (1897); *New Orleans v. Winter*, 14 U. S. (1 Wheat.) 91 (1816); *Levering & Garriques Co. v. Morrin*, 61 F. 2d 115, 121 (2 Cir. 1932), aff'd 289 U. S. 103 (1933).

It cannot be claimed that the Oneida Nation of New York is a citizen of a state different than New York, and under 28 U. S. C. Section 1332 (a) (1) the appellants cannot claim that the Oneida Nation's lack of citizenship in a state other than that of New York creates diversity of citizenship.

The appellants cannot establish diversity of citizenship under 28 U. S. C. Section 1332 (a) (3), because even if the Oneida Nation of Wisconsin, Inc., should be considered as a citizen of Wisconsin for diversity purposes, the Oneida Nation of New York is not a foreign state.

This rule was established in *Cherokee Nation v. Georgia*, 30 U. S. (5 Pet.) 1, 17-18 (1831).

The rule laid down in *Worcester v. Georgia*, 31 U. S. (6 Pet.) 515 (1832), is that state courts may not exercise jurisdiction over Indian tribal affairs or claims arising out of or relating to their restricted tribal lands.

POINT III.

No jurisdiction was acquired under Civil Rights Act, 42 U.S.C. Section 1983 and its implementations, 28 U.S.C. Section 1343 (3).

A county is not a "person" within the meaning of 42 U. S. C. Section 1983 and 28 U. S. C. Section 1343(3). *Monroe v. Pape*, 365 U. S. 167 (1961).

Conclusion.

The order of the District Court of the United States Court of Appeals for the Second Circuit should be affirmed and the complaint dismissed for lack of federal jurisdiction.

Dated: January , 1973.

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